

GAHC010203632016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./110/2016

UNITED INDIA INSURANCE COMPANY LIMITED
HAVING ITS REGD. OFFICE AT CHENNAI AND ONE OF THE REGIONAL
OFFICES AT G.S. ROAD, GUWAHATI.

VERSUS

SMTI DAMYANTI LAHKAR and ANR
W/O SRI KAMALA KANTA LAHKAR, CHANGSARI BHAKAT CHUBA,
DHOPTARI, P.S. KAMALPUR, DIST. KAMRUP, ASSAM.

2:SHRI AMIT CH. DEKA

S/O LATE SAMBHU RAM DEKA
VILL. DHAPATARY
P.S. KAMALPUR
DIST. KAMRUP
ASSAM

Advocate for the Petitioner : MR.A SARMA

Advocate for the Respondent : MR.A R AGARWALA

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. BJ Mukharjee, Advocate.

For the Respondents : Mr. R Sarma, Advocate

Date of Hearing : 15.12.2022

Date of Judgement : 15.12.2022.

JUDGMENT & ORDER (ORAL)

Heard Mr. BJ Mukharjee, learned counsel on behalf of Mr. SS Sharma, learned counsel for the appellant. Also heard Mr. R Sarma, learned counsel for the Insurance Company i.e. respondent No. 2.

2. The present appeal is preferred against the Judgment and Award dated 09.07.2014, passed in MAC Case No. 2035/2011 by the learned Member, Motor Accident Claims Tribunal No. 2, Kamrup.
3. The basic ground of challenge by the Insurance Company is that the award ought to have been made payable by the owner cum driver of the vehicle as it is established that he was possessing fake driving license.
4. It is the case of the claimant that on 12.04.2011 when she was walking by the side of the road at Changsari Bhakat Suba Tiniali, she was knocked down by the offending vehicle bearing registration No. ML-10-5137 coming in a rash and negligent manner from her back side causing her grievous hurt. After the accident, she was shifted to Guwahati Orthopaedic Centre at Athgaon. Thereafter, she was admitted at the Sanjeevani Hospital, Maligaon for her treatment. At the time of accident, the claimant was aged about 50 years and her monthly income was Rs. 4,000/- from her profession.
5. The Hon'ble Apex Court in ***PEPSU Road Transport Corporation –Vs- National Insurance Company*** reported in ***(2013) 10 SCC 217***, after considering different decisions on the Hon'ble Apex Court laid the following principles:-

- I. It is open to the insurer under Section 149 (2) (a) (ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed.
- II. If such defence is taken, the onus is upon the insurance to prove the same.
- III. The owner of a vehicle when hires a driver, he has to check the validity of the driving license and to satisfy himself as to the competent of the driver. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving license with the licensing authority before hiring the services of the driver. In an event, if, despite having information regarding a fake license, yet the owner does not take appropriate action for verification of the matter, then, insured will be not at fault and in circumstances, insurance company is not liable for compensation.

6. In the case of ***National Insurance Co. Ltd –Vs- Swaran Singh and Ors*** reported in ***(2004) 3 SCC 297***, the Hon'ble Apex Court had that mere absence, fake or invalid driving license or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer against either the insured or the 3rd parties. It was also held in ***Swaran Singh and Ors (supra)*** that to avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of policy regarding use of vehicle by duly licensed driver or one who was not disqualified to drive at that relevant point of time.

7. In the case of ***Ram Chandra Singh Vs Rajaram and Ors*** reported in ***2018 8 SCC 799***, the Hon'ble Apex Court, upon consideration of different

earlier judgments passed by the Hon'ble Apex Court held that the mere fact that driving license is fake, per- se, would not absolve the insurer and in that case, the principle of pay and recovery shall be applicable.

8. The Hon'ble Apex Court in the case of ***Shamanna –Vs- The Oriental Insurance Company Limited and Ors*** reported in ***2018 9 SCC 650*** laid down that if a driver of an offending vehicle does not possess a valid driving license, the principle of "pay and recover" can be ordered.
9. This Court is also of the considered opinion that the 3rd party victim shall not be allowed to suffer any further and therefore, this is a fit case whether the principle of pay and order can be directed. Therefore, the learned Tribunal below has not committed any error while passing the impugned judgment.
10. Accordingly, the present appeal is dismissed being devoid of any merit.

JUDGE

Comparing Assistant